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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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15 UNITED STATES OF AMERICA, ) No. CR-07-0102 PJH  
16 v. )  
17 Plaintiff, ) DEFENDANT'S UNOPPOSED MOTION  
18 ) AND [PROPOSED] ORDER GRANTING  
19 ) MOTION FOR COMPETENCY  
20 ) EVALUATION AND HEARING  
21 JOSE ANGUIANO-GONZALEZ, )  
22 Defendant. )  
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24 Defendant Jose Guadalupe Anguiano-Gonzalez stands accused of illegal reentry  
25 following deportation, in violation of 8 U.S.C. § 1326. By and through undersigned counsel, and  
26 pursuant to 18 U.S.C. § 4241(a), defendant respectfully moves for a local psychiatric or  
psychological examination of the defendant, and for a hearing to determine whether he is  
competent to proceed in this matter.

A defendant is incompetent to stand trial if he is presently suffering from a mental disease  
or defect that renders him unable to understand the nature and consequences of the proceedings  
against him or to assist properly in his defense. *See* 18 U.S.C. § 4241(d); *Dusky v. United States*,  
362 U.S. 402 (1960). A motion for a competency hearing shall be granted if there is reasonable  
cause to believe that the defendant may be incompetent. *See* 18 U.S.C. § 4241(a).

1 Here, the defendant has repeatedly indicated to undersigned counsel that he is confused  
2 and that there is something wrong with his mind. *See Cohen Decl.* ¶ 4. He has complained  
3 earnestly about, and pointed out to undersigned counsel, bizarre and unobservable physical  
4 ailments. *See id.* ¶ 5. He has shown a pronounced inability to stay focused on topics germane to  
5 his defense, perseverating and circumlocuting concerning issues collateral to his case. *See id.* ¶  
6 6. His short-term memory appears to be impaired, and he seems unable to retain and process  
7 new information. *See id.* ¶ 7. While Mr. Anguiano has received no mental-health treatment at  
8 Santa Rita Jail, *see id.* ¶ 9, he reports having received a white tablet twice daily during a term of  
9 imprisonment at Calipatria State Prison, and that he felt less confused when taking that  
10 medication.<sup>1</sup> *See id.* ¶ 8.

11       Based on these and other symptoms, undersigned counsel is concerned that Mr. Anguiano  
12 may not be competent to proceed at this time. Accordingly, it is respectfully requested that the  
13 Court order a local psychiatric or psychological examination pursuant to 18 U.S.C. § 4241(b),  
14 and a hearing on the issue of competency pursuant to 18 U.S.C. § 4241(c).

15 The government does not oppose this motion.

16 | Dated: April 24, 2007

Respectfully submitted,

BARRY J. PORTMAN  
Federal Public Defender

/s/

JOSH COHEN  
Assistant Federal Public Defender

## ORDER

Accordingly, and for good cause shown, it is hereby ORDERED that United States

<sup>1</sup>Although medical records have been requested from the California Department of Corrections, they have not yet been produced.

1 Pretrial Services, in consultation with counsel for the defendant and the government, shall  
2 arrange a local competency evaluation of Mr. Anguiano-Gonzalez by a qualified psychologist or  
3 psychiatrist, assisted if necessary by a court-certified Spanish interpreter. The psychologist or  
4 psychiatrist shall evaluate Mr. Anguiano-Gonzalez and promptly file a report with the Court that  
5 complies with the requirements of 18 U.S.C. § 4247(c) and responds to the following questions:

- 6       1.     Does Mr. Anguiano-Gonzalez have a rational as well as a factual  
7                  understanding of the charges against him?
- 8       2.     Does Mr. Anguiano-Gonzalez have a sufficient present ability to  
9                  consult with his lawyer with a reasonable degree of rational  
10                 understanding?
- 11      3.     If Mr. Anguiano-Gonzalez does not presently have a rational or  
12                  factual understanding of the charges or presently does not have  
13                  sufficient ability to consult with his lawyer with a reasonable  
14                  degree of rational understanding, then is there a substantial  
15                  probability that he will attain these capacities in the foreseeable  
16                  future?

17                  Further proceedings in this case are postponed until the report is received and a  
18                  competency hearing is convened. Pursuant to 18 U.S.C. § 3161(h)(1)(A), the period of time  
19                  from the filing of the defendant's motion to the entry of an order finding Mr. Anguiano-Gonzalez  
20                  competent is excluded for purposes of the Speedy Trial Act.

21                  It is further ORDERED that, pursuant to Rule 12.2(c) of the Federal Rules of Criminal  
22                  Procedure, no statement made by the defendant in the course of this examination, nor any  
23                  testimony by the expert based upon such statement, nor any other fruits of the statement, shall be  
24                  admitted in evidence against the defendant in any criminal or civil proceeding except on an issue  
25                  respecting mental condition on which the defendant has induced testimony.

26                  ///

1        If no competency hearing has been convened prior to May 23, 2007, the parties shall  
2 appear on May 23, 2007 at 1:30 p.m. for a status conference.

3        IT IS SO ORDERED.

4 Dated: 4/25/07



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